

ADMINISTRATION OF WATER COURT DECREES

An overview of the process for distribution and administration of water under Montana Water Court decrees

This is a brief overview of the water distribution and administration of decrees issued by the Montana Water Court. Water is also administered under historical decrees issued by District Courts before the inception of the Montana Water Court throughout Montana and are not included in this overview. These historical decrees did not necessarily include all water users or types of rights on a stream.

The Montana Water Court issues temporary preliminary, preliminary, and final decrees of existing water rights by hydrologic basin, based upon over 200,000 statements of claim filed by water users statewide. A statement of claim is a filing of water use prior to June 30, 1973.

Montana Water Court decrees can be administered in basins, or portions of basins, with temporary preliminary and preliminary decrees after objections and hearings. To date none of the water distribution projects encompass all rights in an entire decreed basin, but are requested on specific streams or portions of streams within several basins throughout the state. At this point the projects are usually limited to surface water rights.

Requests to administer water under Water Court decrees are made by water users or the District Court. A water user petition requires signatures of 15% of the owners of water rights affected by the source to be administered.

By statute, **MCA 85-5-101. Appointment of water commissioners.** (1) *The commissioners have authority to admeasure and distribute to the parties owning water rights in the source affected by the decree the waters to which they are entitled, according to their rights as fixed by the decree and by any certificates, permits, and changes in appropriation right issued under chapter 2 of this title. When petitioners make proper showing that they are not able to obtain the application of the owners of at least 15% of the water rights affected and they are unable to obtain the water to which they are entitled, the judge of the district court having jurisdiction may appoint a water commissioner.*

The Montana Water Court evaluates status of hearings and objections within the requested source or sources, and coordinates with the District Court, water commissioners, and water users to determine the project scope and requirements. If objections and hearings are resolved within the decree process, the Water Court requests the assistance of the DNRC to create water distribution lists and maps for the District Court.

The DNRC reviews the claims on the requested source or sources and identifies and numbers the claimed points of diversion. The DNRC also makes note of any discrepancies and complex water delivery such as storage water and water exchanges. The DNRC prepares

three reports for the Montana Water Court and the District Court. The reports are water rights listed by priority, diversion number, and ownership. These reports are for surface water rights which not only include the pre-1973 statement of claim water right types but also the post 1973 water right changes, exempt rights, permits, and reservations. The DNRC also provides detailed maps of the diversions on a local and drainage scale. The Water Court and/or District Courts often hold public meetings in conjunction with these projects, and when asked, the DNRC also attends public meetings to explain the diversion numbering system and the process involved in generating the indexes. If errors are identified they are corrected by the DNRC or the Water Court depending on the nature and scope of the problem (*see WATER RIGHT ADJUDICATION RULES AMENDED BY THE MONTANA SUPREME COURT December 5, 2006 at http://courts.mt.gov/content/water/rules/water_right_adjudication_rules.pdf*).

To date the DNRC has prepared **53** water distribution projects at the request of the Montana Water Court. The number of projects administered by the District Courts varies from year to year, therefore all 53 projects are not under enforcement every year, and several of the projects were prepared for initial distribution during the 2016 irrigation season. DNRC and the Water Court maintain and update all enforcement projects every year.

Within the distribution areas, approximately **12,435** points of diversion have been assigned enforcement numbers. All types of active surface water rights are included in these projects which total **7,908**. These include water rights from both the New Appropriations Program (post 1973 rights) and the Adjudication Program (pre-1973 rights). In the winter of 2006/2007 all enforcement projects were converted into the Water Rights Central Data Base, a significant improvement for future efficiency.

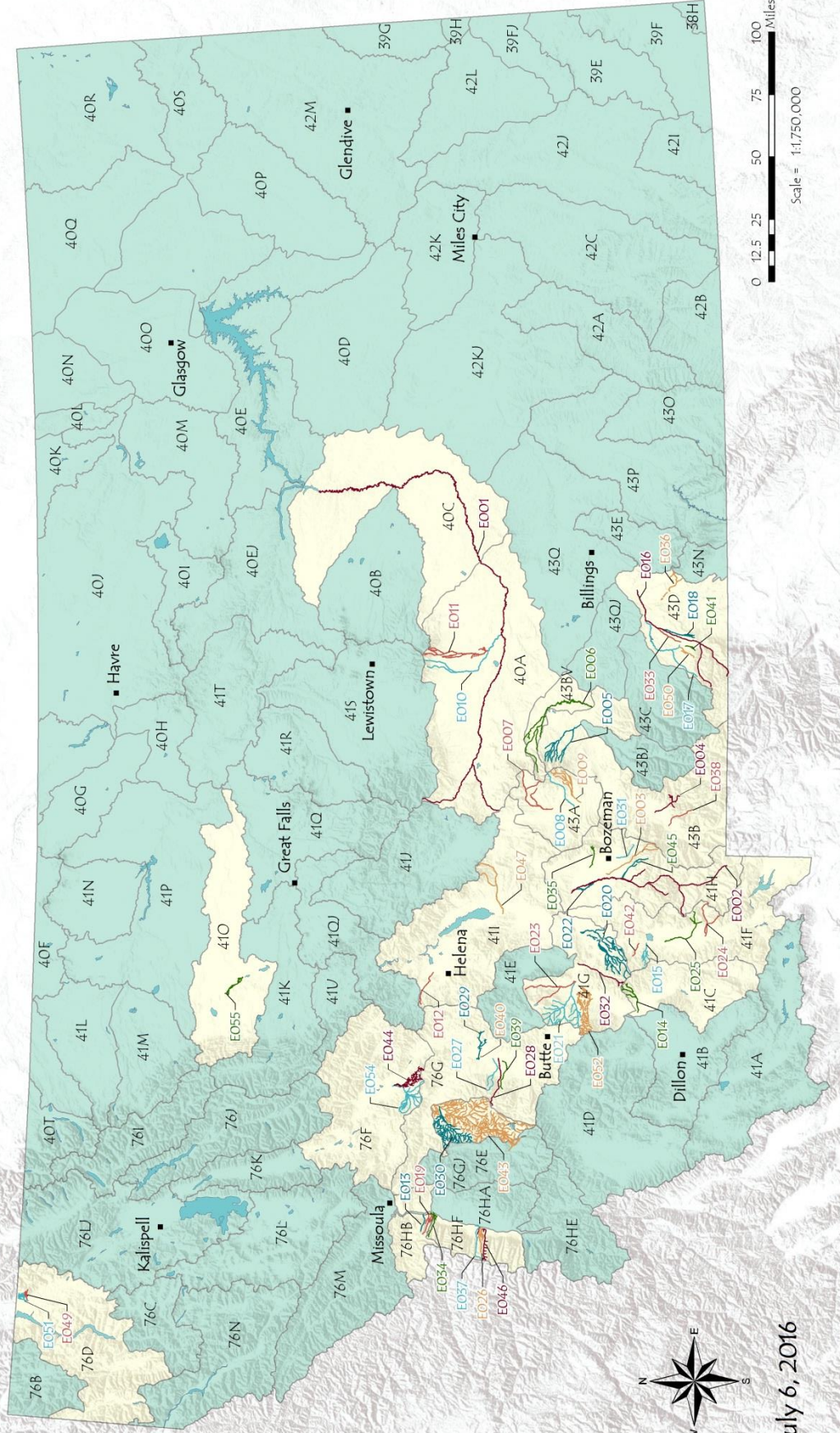
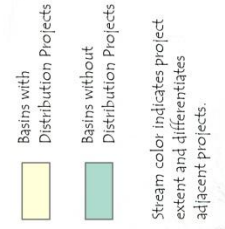
The local District Court has jurisdiction over distribution of the water. The DNRC and the Montana Water Court only provide information and correct errors found in water rights on the tabulations in the enforcement areas, and provide any other assistance requested by the District Courts. The District Court appoints a water commissioner or commissioners to deliver available water. Only the water commissioner has the authority to admeasure and distribute water to parties owning water rights in the source or sources. Unless specifically identified, the duty of the water commissioner is to deliver available water within a source or sources to a point of diversion based on priority date.

The following table shows the 53 water distribution actions currently prepared.

<u>E #</u>	<u>Source</u>	<u>County</u>	<u>Basin</u>	<u>Total Rights</u>
E001	Musselshell River	Meagher/Golden Valley Wheatland/Musselshell	40A/40C	567
E002	West Gallatin River	Gallatin	41H	600
E003	Hyalite Creek	Gallatin	41H	180
E004	Mill Creek	Park	43B	277
E005	Big Timber Creek	Sweet Grass	43B	228
E006	Sweet Grass Creek	Sweet Grass	43BV	209
E007	Shields River	Park	43A	190
E008	Cottonwood Creek	Park	43A	109
E009	Rock Creek	Park	43A	162
E010	Careless Creek	Wheatland/Golden Valley	40A	80
E011	Swimming Woman Creek	Golden Valley	40A	56
E012	Silver Creek	Lewis & Clark	41I	32
E013	Carlton Creek	Missoula	76H	70
E014	Wisconsin Creek	Madison	41C	80
E015	South Meadow Creek	Madison	41F	132
E016	Rock Creek / Tribs	Carbon	43D	777
E017	Red Lodge Creek / Tribs	Carbon	43D	98
E018	Clear Creek	Carbon	43D	61
E019	One Horse Creek	Ravalli	76H	108
E020	Willow Creek / Tribs	Madison	41G	380
E021	Pipestone Creek / Tribs	Jefferson	41G	130
E022	Baker Creek	Gallatin	41H	61
E023	Whitetail Deer Creek	Jefferson	41G	59
E024	Indian Creek	Madison	41F	44
E025	Bear Creek	Madison	41F	40
E026	Sheafman Creek	Ravalli	76H	143
E027	Dempsey Creek	Powell	76G	77
E028	Racetrack Creek	Powell	76G	121
E029	Cottonwood Creek	Powell	76G	76
E030	Lower Willow Creek / Tribs	Granite	76G	132
E031	Sourdough Creek	Gallatin	41H	63
E032	South Boulder River	Madison	41G	198
E033	Dry Creek	Carbon	43D	60
E034	Sweeney Creek	Granite	76H	166
E035	Middle Cottonwood Creek	Gallatin	41H	27
E036	Bluewater Creek	Carbon	43D	62
E037	Fred Burr Creek	Ravalli	76H	168
E038	Emigrant Creek	Park	43B	38
E039	Modesty Creek	Deer Lodge	76G	13
E040	Valition Ditch	Powell	76G	10
E041	Chaffin Creek	Carbon	43D	5
E042	North Meadow Creek	Madison	41F	376
E043	Flint Creek / Tribs	Granite / Deer Lodge	76GJ/76E	545
E044	Cottonwood Creek / Tribs	Powell	76F	56
E045	South Cottonwood Creek	Gallatin	41H	138
E046	Mill Creek / Tribs	Ravalli	76H	314
E047	Deep Creek / Tribs	Broadwater	41I	76
E049	Indian Creek / Tribs	Lincoln	76D	29
E050	Cole Creek & Barry Creek	Carbon	43D	25
E051	De Rozier Creek / Tribs	Lincoln	76D	26
E052	Fish Creek / Tribs	Jefferson / Silver Bow	41G	81
E054	Douglas Creek / Tribs	Powell	76F	121
E055	Spring Creek / Tribs	Teton	41O	32



E#	Project Name	Basin #	E#	Project Name	Basin #	E#	Project Name	Basin #	E#	Project Name	Basin #						
E001	Musselshell River	40A-40C	E010	Careless Creek	40A	E019	One Horse Creek	76HB	E027	Dempsey Creek	76G	E036	Bluewater Creek	41H	E045	So. Cottonwood Cr.	41H
E002	Swamp Gallatin River	41H	E011	Swimming Woman Cr.	40A	E020	Willow Creek	41G	E028	Racetack Creek	76G	E037	Fried Burr Creek	76H	E046	Mill Creek	76H
E003	Hyalite Creek	41H	E012	Silver Creek	41I	E021	Pipestone & Little	41G	E029	Cottonwood Creek	76G	E038	Emigrant Creek	43B	E047	Deep Creek	41I
E004	Mill Creek	43B	E013	Calfion Creek	76HB		Pipestone Creeks		E030	Lower Willow Creek	76GJ	E039	Modesty Creek	76G	E049	Indian Creek	76D
E005	Big Timber Creek	43B	E014	Wisconsin Creek	41C	E022	Baker Creek	41H	E031	Southrough Creek	41H	E040	Vallition Ditch	76G	E050	De Cr. & Barry Cr.	43D
E006	Sweet Grass Creek	43BV	E015	South Meadow Creek	41F	E023	Whitetail Deer Cr.	41G	E032	Soudy Boulder River	41H	E041	Chaffin Creek	76D	E051	Co Rozier Creek	76D
E007	Shields River	43A	E016	Rock Creek	43D	E024	Indian Creek	41F	E033	Dry Creek	43D	E042	North Meadow Cr.	41F	E052	Fish Creek	41G
E008	Cottonwood Creek	43A	E017	Red Lodge Creek	43D	E025	Bear Creek	41F	E034	Sweeny Creek	76H	E043	Flint Creek	76GJ	E054	Douglas Creek	76F
E009	Rock Creek	43A	E018	Clear Creek	43D	E026	Sheafman Creek	41E	E035	Middle Cottonwood Cr.	76H	E044	Cottonwood Creek	76F	E055	Spring Creek	41O



July 6, 2016